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Filing date: **11/15/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, #171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
Filer's e-mail	uspto@edgegames.com
Signature	/Tim Langdell/
Date	11/15/2011
Attachments	ReplyToFuturesOppositionToReverseDivision.pdf ( 41 pages )(1233895 bytes )



knew it was out of time to Reply to the Motion and sought to mislead the Board into believing its filing was timely.

3. And yet again Edge notes that Future could have listened to the Board's prior strong encouragement that the parties file all documents electronically, but yet again Future filed via mail rather than using the ESTTA system.

4. The only party with standing to oppose Edge's motion to reverse the division of Reg. No. 2,217,837 was Future. Petitioners did not have standing to oppose this part of Edge's motion. Since Future failed to file a timely opposition to Edge's motion, thus the motion to reverse the division of this mark is unopposed by any party with standing to oppose it. Consequently, since the motion to reverse the division of the registration is unopposed, clearly Edge's motion should be granted and Reg. No. 2,217,837 should be put back in to its previous undivided state as if it had never been divided.

5. With the registration back in its state prior to division, then Reg. No. 2,217,837 is clearly owned jointly by Edge and Future (and was jointly owned at all relevant times in these proceedings). Since Edge was not the sole owner of this registration, Edge lacked the authority and standing to voluntarily surrender this registration. Consequently, the section 7 surrender of Reg. No. 2,217,837 should be reversed (voided).

6. If Future's opposition is deemed timely – which Edge believes it clearly is not – then Edge observes that Future sought to join in and incorporate by reference Docket No. 61. However, Docket No. 61 was an invalid filing by Petitioners since it lacked a signed Certificate of Service. This is why Petitioners filed their corrected opposition brief at Docket No. 62. Since Future did not incorporate the corrected brief, and only sought to join in and incorporate an invalid brief, Future consequently did not join in or incorporate by reference Petitioners' opposition brief.

7. Further or in the alternate, if the absence of a valid opposition to the motion by Future does not grant the motion in Edge's favor, then Edge notes that Petitioners have argued that Edge should not have been granted Reg. No. 2,217,837 because Petitioners allege Edge committed fraud on the PTO (which Edge strongly denies) in originally procuring the registration. Similarly, Petitioners argue in the instant cancellation petition (whether original or as amended) that Edge abandoned Reg. No. 2,217,837 prior to the date the registration was partially assigned to Future. If either of these statements is true – which Edge denies they are true, but they do stand alleged – then

the partial assignment of this registration to Future was invalid. If the partial assignment of this registration to Future was invalid, then the division was invalid, too.

8. Further or in the alternate if the absence of a valid opposition to the motion by Future does not grant the motion in Edge favor, Edge repeats that while it did file the section 7 surrender on a *with prejudice* basis, it did so falsely believing at the time that it was compelled to do so by the District Court Order and that Edge would be in contempt of court if it failed to file the surrender on these terms. However, at the time of filing the surrender Edge was unaware that Petitioners had committed fraud on the District Court in obtaining the stipulated order and forcing Edge to settle. Moreover, at the time of filing the surrender Edge was not aware that the District Court Order was void on its face since a necessary party (Future) was not a party to the law suit. For all these reasons, Edge should not be held to the fact it filed on a *with prejudice* basis and Edge should be permitted to reverse (void) the surrender of the '837 registration.

9. Edge further wishes to clarify that the question of whether or not Edge was the sole owner of the '837 registration at the time of the District Court Final Order or at the time of the settlement with Petitioners is not pertinent to whether the court order and settlement are valid. What invalidated the court order and invalidated the settlement was the fact there were at least two other trademark registrations subject of the District Court case and subject of the settlement, both of which Future was and is co-owner of. And there is no reasonable doubt whatsoever that Future was and remains co-owner of these two registrations, 3,559,342 and 3,105,816 which in turn made Future a *necessary and indispensable party*. Neither Petitioners nor Co-Defendant Future have put forward any valid or compelling argument to counter Edge's assertion that these registrations were co-owned by Future at the time of the District Court Final Order and settlement; it thus follows (as Future itself also argued in its Intervener filing, Docket No. 40) that both the court order and settlement are void on their face. Should the reversal of the division of the '837 registration also be approved then this would add to the fact that the court order and settlement were invalid, but it is not critical to invalidating either the order or the settlement. So long as *even one* of the registrations was co-owned by Future then the court order and settlement were invalid.

10. Since the court order and settlement are invalid and void on their face due to the co-ownership status of Reg. Nos. 3,559,342 and 3,105,816, it follows that Edge should not have been compelled to file the surrender of Reg. No. 2,217,837 believing there was a valid court order and settlement compelling Edge to do so.

11. If Future's Opposition is deemed timely – which Edge does not believe it was – then Edge notes that Future incorporated its opposition to Edge's motion to withdraw its voluntary surrender of the '837 Registration. Noting this Edge thus incorporates its Reply to Future's prior opposition filed as Docket No. 55. Insofar as Future sought to argue this filing was untimely, Edge notes its incorporation here is timely in response to Future's incorporation of its Docket No. 47. Insofar as Future alleged our prior filing at Docket No. 55 exceeded the page limit, Edge summarizes the contents of Docket No. 55 as follows to ensure incorporation.

12. **As co-owners of at least two of the trademark registrations in question, Future was an indispensable party and necessary party to the District Court action: since Future was not a party to that suit, no valid final judgment could lawfully be made. Accordingly, the final judgment issued by the District Court was invalid and void on its face (not merely voidable). For the same reasons, Future was an indispensable and necessary party to any settlement and consequently the settlement between Edge and Petitioners was also void.**

13. In is opposition to Edge Games' Motion to Reverse the Section 7 Surrenders of Reg. Nos. 3,559,342 and 2,219,837, Co-Defendant Future Publishing Ltd ("Future") makes a number of false and misleading statements. Indeed, much like the false and misleading statements that it, and its collaborator Electronic Arts, made to the District Court in October 2010 that caused the Judge in that case to gain an entirely false view of Edge Games, its business practices and the legitimacy of its trademark registrations. The District Court judgment was obtained fraudulently.

2. Future states that Edge Games filed a "frivolous" trademark infringement action against Electronic Arts, but Future fails to say that it represented to Edge Games that it was "side by side" with Edge Games against Electronic Arts in the trademark infringement dispute (see Exhibit A). Future also fails to mention that it was Future that insisted Edge Games must take whatever action is necessary against Electronic Arts (see Exhibit B). Future also fails to mention that when Electronic Arts applied to register the Edge mark Future required Edge Games to dispute ("Mirror's Edge") the USPTO refused to permit Electronic Art's application to go forward to publication, stating that there was clear evidence that the mark "Mirror's Edge" had a likelihood of confusion in the mind of consumers with Edge Games and Future's mark "Edge" (see Exhibit C). None of this suggests a law suit that was in any sense "frivolous," and indeed the law suit was clearly well founded and not frivolous. It was, though, brought by Edge Games at the insistence of Future,

which makes Future's motivation in these making false and deliberately misleading representations highly suspect.

3. Future also falsely state that as a condition of dismissal of the law suit with Electronic Arts, "Mr. Langdell" (sic) was required to stipulate that "each of the above-referenced trademark registrations [...] would be ordered cancelled by the Court." Future also falsely state that as a condition of dismissal a copy of the Judgment of cancellation would have to be submitted to the Commissioner for Patents and Trademarks. Neither statement is true: the legal action in question was settled by an agreement reached between Electronic Arts and Edge Games, part of which settlement and associated stipulation included a draft stipulated judgment that the parties asked the judge to sign. These were thus no "conditions of dismissal" as Future seeks to mischaracterize them to the Board, they were not terms that Edge was "*required* to stipulate," they were terms of settlement that Electronic Arts and Edge Games worked out and agreed upon between them. Terms that, in hindsight, Future needed to be a party to in order for the settlement and stipulated judgment to be valid in law.

4. This is a clear case of commercial sabotage, with Future acting in collusion with petitioner Electronic Arts against Edge Games. Future has a vested interest in seeking the cancellation of Edge Games' marks, even those that Future co-owns: nearly all of Future's current use of the mark "Edge" in U.S. commerce is under a perpetual and irrevocable trademark license from Edge Games. By forcing the cancellation of Edge Games' registrations and registering the mark Edge itself<sup>1</sup> Future clearly hopes to circumvent its license from Edge Games.

5. What Future avoids mentioning, presumably because they wish the Board to overlook it, is that by virtue of being co-owners of three of the registrations in these proceedings they not only shared with Edge Games in the benefits and protection afforded by owning a trademark registration, but as co-owners Future share with Edge Games all responsibility and liability associated with procurement, renewal and existence of the registrations. Certainly, Future shares liability for all actions since it became a co-owner in October 2004, although again Edge

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<sup>1</sup> Future currently have two trademark applications before the USPTO for the mark "Edge," Serial Nos. 85153981 and 85130964. These applications are in large part for goods and services that Future currently licenses the right to from Edge Games (electronic publication of its magazine entitled "Edge"). Office Actions by the PTO in these two applications have cited the marks jointly owned by Edge Games and Future (2219837 and 3559342) against the applications, stopping both applications from moving forward to publication. Future thus has a vested interest in having the instant Edge Games registrations cancelled so that its applications can move forward. However, in a bizarre twist Future has claimed to the PTO that it is the sole owner of reg. nos. 2219837 and 3559342.

denies there has been any wrongdoing merely the deliberate attempt by EA and Future to mislead people into believing there was wrongdoing in order to defame Edge and its officers.

6. In its Opposition Future argues that the Board is obliged to comply with the District Court's Order. Future also argues that Edge Games' recourse if it felt the District Court's Order was not valid was to file a motion to the District Court seeking to vacate, modify or otherwise seek relief from the Judgment. Future is mistaken on both points: first, neither the Board, nor the Commissioner For Trademarks, is obliged to comply with a District Court Order that is clearly invalid. Indeed, the Board should not comply with a void judgment. The District Court Judgment sought to bind and/or impact a third party (a non-party) – Future Publishing Ltd – in an action to which Future was not a party. It is axiomatic that any Judgment or Court Order that seeks to bind and/or impact a third party who was not a party to the action (a “non-party”) is invalid and thus *void ab initio* (see *Potenz Corp. v. Petrozzini*, 170, Ill, App, 3d 617, 525 N.E. 2d 173, 175 (1988)). Where a court seeks to make an order that would bind a non-party then all that is required to determine the order is void is to inspect the record of the case and determine that the party the court sought to bind and/or impact (here Future) was not a party to the case. That being determined then the order (judgment) is automatically deemed *void ab initio*.

7. It is a common misconception even among attorneys that only a judge can declare an order or judgment void, but this is not the law. If a court acts beyond its authority – here seeking to bind and/or impact an entity that was not a party to the law suit – then the judgment in question and all orders arising from the judgment are automatically void. As the U.S. Supreme court stated “Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but are simply void, and this is even prior to reversal”[emphasis added] (*Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S. Ct. 236 (1907); *Williamson v. Berry*, 8 How. 495, 540, 12 L.Ed, 1170, 1189, (1850); *Rose v. Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

8. That is, any judgment or order that seeks, even just in part, to bind and/or impact a person or entity that was not a party to the court action is invalid in its entirety. It is not merely “voidable” (in the sense of being *subject to being* voided by a judge upon a motion to vacate or similar or upon appeal), such judgments and such orders are automatically void. Indeed, case law Edge Games' Reply to Future's Opposition To Motion To Reverse Division; Cancl. No. 92051465

(see above) states that such judgments and orders by virtue of being void, rather than voidable, may not be appealed and may not have motions in respect to them filed for them to be vacated or modified. The judgment or order in question being *void ab initio* in a real sense does not exist, and thus cannot be modified, vacated or appealed. Here, since the District Court's Judgment and Order were *void ab initio* because the court sought to bind and/or impact a non-party, there was no need for Edge Games to file any motion or to appeal for the District Court's Final Judgment to be deemed void. Indeed, a void order cannot be appealed against or modified, since by definition it does not exist. A void order has no legal force or effect.

9. In addition and in the alternate (while still maintaining the Judgment is void), the court ordered the cancellation of the trademark registrations because it was requested to do so by the parties as part of a settlement between the parties. The court judgment, then, was a result of Edge Games agreeing with Electronic Arts to voluntarily surrender the registrations in question, not because the court heard the merits of the case and ordered cancellation based on full litigation of the merits. However, Edge Games lacked the standing and authority to enter into the settlement and court stipulation since it was not the sole owner of all the trademark registrations in question. Edge Games had no authority to stipulate to the court that it agreed to the cancellation of the registrations since it was not the sole owner of those registrations (indeed, had Edge Games been fully cognizant that it was not the sole owner of the trademark registrations in question at the time then it would not have entered into the court stipulation or the settlement. Had Edge properly recalled it was not the sole owner of the marks, Edge would not have just entered into a stipulation or settlement as to its part of the registrations, rather it would not have entered into a stipulation or a settlement at all).

13. The point made that Edge Games and the District Court may have been aware of the partial assignment of the registration to Future does not make the Court's Final Judgment valid. The District Court had an obligation to add Future as a party to the court action upon being notified that Future was co-owner of at least one (and Edge Games says two and probably three) of the trademark registrations in question. That is, it added to the invalidity of the judgment and did not take away from it.

14. The stipulation as well as the settlement (each exhibited by Future) both clearly state that there is to be deemed no wrongdoing by any party and no finding as to wrongdoing by any party (hence no finding of fraud on the USPTO in obtaining any of the registrations, including the instant one). Indeed, since the case was not litigated on the merits, there obviously was no such

Edge Games' Reply to Future's Opposition To Motion To Reverse Division; Cancl. No. 92051465

finding. Further, in the Final Judgment the Sixth Claim for Relief by Electronic Arts (Declaratory Relief) was not found in Electronic Arts favor but was found in Edge Games favor. This Sixth Claim for Declaratory Relief (see Exhibit D to the attached declaration) called upon the court to declare that Edge Game's had no common law rights associated with its trademark registrations . By denying this Sixth Claim, and instead ruling in Edge Games favor on it, the court effectively ruled that Edge Games does have all its common law rights in its trademarks, and thus had certainly not abandoned any of its trademark registrations.

15. Consequently, the District Court's Final Judgment contains an order to the Trademark Office to cancel the five referenced trademark registrations without stating any reason why they should be canceled. What the Board can determine, though – by reviewing the stipulation, the settlement and the Final Judgment itself -- is that the cancellations were not to be on the basis of either fraud on the USPTO or on the basis of abandonment – and yet those are the only bases a court could order cancellation.

16. Further and in the alternate (while still maintaining the Judgment is void), the settlement agreement between Electronic Arts and Edge Games anticipates at paragraph 2.2 (see the exhibit to Future's Reply) that the USPTO may either fail or refuse to cancel the U.S. trademark registrations in question. In this event, the settlement states, Edge Games is to file in the USPTO a petition for voluntary cancellation. As the record shows, this is precisely what Edge Games did upon being requested to do so by Electronic Arts. Contrary to what Future say in their Reply, then, Edge Games complied fully with the settlement by taking the step it was required to take of filing the Section 7 Surrenders that it did file (although this is now moot given the settlement is clearly void on its face, too).

17. As Future also notes, the petitioner at first filed its Request For Entry Of Judgment (docket 32) arguing that it had a District Court Judgment in its favor and thus should have a judgment in its favor in the instant cancellation proceedings, too. As Future further noted, Petitioner then withdrew this Request For Entry Of Judgment because Edge Games reminded petitioner Electronic Arts that such a judgment would be entirely contrary to the settlement between the parties and the courts' stipulated order that stated there was no finding of fraud and no finding of abandonment. As the record shows (at docket 33), in withdrawing its Request for Entry of Judgment, petitioner. Since the settlement and the court stipulation specifically anticipated that if the USPTO did not cancel the registrations based simply on receiving the Court judgment in Edge Games' Reply to Future's Opposition To Motion To Reverse Division; Canc'l. No. 92051465

October 2010 then Edge Games was to file voluntary surrenders, and since (at docket 33) it is clear that the parties specifically agreed not to terminate the proceedings before the Board by invoking the Court's Final Judgment but instead agreed to have Edge Games file the voluntary surrenders, for this reason too Future's Motion should be denied.

18. There is no such argument or confusion surrounding the second registration in this Motion, reg. no. 3,559,342, which was undisputedly not divided either at the time of filing the instant petition or at the time of the court judgment. Like the third registration (3,105,816) that Edge Games previously filed a successful motion to withdraw its section 7 surrender of, the Board should also grant Edge Game's motion to withdraw the section 7 surrender of 3,559,342 for the same reasons that the Board found compelling for reg. no. 3,105,816.

19. Future's Opposition also makes outlandish and deliberately misleading statements of the kind they and Electronic Arts made to the District Court that caused the court to gain a completely false view of Edge Games, its business practices and its trademark registrations. While the ultimate void "final judgment" was stipulated, it was nonetheless obtained through fraud on the court by Electronic Arts and Future. Contrary to what Future say, the District Court did not make any finding that Edge Games or Dr. Langdell personally were guilty of fraud, nor did the court make any finding that Dr. Langdell had made "numerous willful false statements under oath to the USPTO and to the Court." On the contrary, while the District Court Judge expressed his *opinion* based on the false and deliberately misleading information supplied to him by Future and Electronic Arts, he did not make any such findings against Edge Games or Dr. Langdell and indeed made clear that at trial the jury might reach an entirely difference conclusion (see page 21, line 7 of the Court's ruling on the Preliminary Injunction exhibited to docket 47).

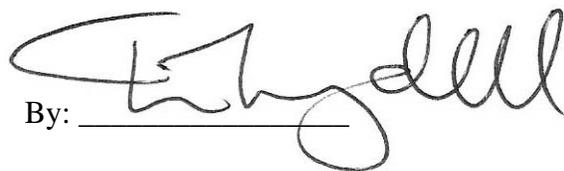
20. Petitioners aided by Future fraudulently elicited the negative opinion given by Judge Alsop by deliberately misleading the Judge and by Petitioners' witnesses giving knowingly false testimony that was deliberately intended to give a false negative impression of Edge Games and its CEO Dr. Langdell. Future's James Binns committed several acts of perjury to support Petitioners (Binns falsely stated Future's Edge Magazine had no presence in the US market prior to October 2004 when the magazine had extensive presence since the mid-1990s (Exhibit E); he also falsely stated the 2004 Agreement could not be assigned when there was even a clause labeled "Assignment" (Exhibit F); he deliberately sought to mislead the court into thinking there was only one EDGE magazine style publication in August 2004 and that thus Edge Game's submission to the Edge Games' Reply to Future's Opposition To Motion To Reverse Division; Cancl. No. 92051465

PTO must be fake when in fact Edge's submission was entirely genuine since at the time Edge Games had the sold US print rights for such US publications as Binns full knew). Marvel's Mr. Bard also committed perjury to support Petitioners (he falsely stated Marvel had no license from Edge when it did and still does to this day; he also falsely stated that Marvel's Edge branded comics had not been sold for over a year prior to assignment to Edge, but as the attached declaration sworn by Marvel in late 1997 as part of a USPTO filing shows, Marvel affirmed under penalty of perjury that their Edge titled comics in question were still on sale at that time, thus proving Mr. Bard didn't tell the truth. Exhibit G). Petitioners also sought to deliberately mislead the court in other ways: such as exhibiting side by side Edge's Snoopy and Garfield box covers from two different markets and two different time frames, and deliberately suggesting in each case one box cover was genuine and the other fake when in fact Petitioners knew well that in each case both Edge product box covers were entirely genuine.

22. Future also sought other ways to impugn Edge Games' reputation, for instance by putting Edge on notice under the joint agreement between the parties of the existence of a game called "Edge" published by a French company, Mobigame and thereby requiring Edge Games to take action against Mobigame to either get the company to stop use of the mark EDGE or get the French game to use the mark under license to Edge (see Exhibit H in the attached declaration). This lead to extensive defamation of Edge Games and its CEO caused by Future's requirement under the contract which Future then distanced itself from as if it had nothing to do with the actions against Mobigame that it had instigated via Edge. This, along with the defamation and deliberate misleading of the District Court, makes clear that Future and Petitioners are in collusion, with their goal at least in part to deprive Edge of its rightful US trademark registrations and cause Edge harm.

Date: November 15, 2011

Respectfully submitted,

By: 

Dr. Tim Langdell, CEO  
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Certificate of Service

In accordance with the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Edge Games' Reply to Future Publishing's Opposition to Motion to Reverse the Division of 2,219,837 or to Bring Child Reg. 3,713,604 into These Proceedings Filed by Future was served on the following Co-Defendant and counsel of record for the Petitioners, by depositing same in the U.S. Mail, first class postage prepaid, this 15th day of November, 2011:

Robert N. Phillips  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105

Vineeta Gajwani  
Electronic Arts Inc.  
209 Redwood Shores Parkway  
Redwood City, CA 94065

  
Cheri Langdell

# **EXHIBIT A**

----- Original Message -----

**From:** [Mark Millar](#)

**To:** [Tim Langdell](#)

**Cc:** [Jo Clayton](#)

**Sent:** Friday, March 06, 2009 3:26 PM

**Subject:** RE: Your call re EA meeting - message truncated.

Hi Tim

Apologies for the cut off message. The call was cordial and fairly open. However, there are no conclusions at this stage - we discussed a number of options, and they are going to consider their position based on what we discussed.

In a nutshell they started by saying that the relationship with Future is very important to EA - and I do think that this is an important factor in trying to get a settlement. They went on to say that the brand is very important to them and they have partners in ancillary areas. They strongly believe that they would get both a US trademark and a UK trademark and mentioned that they have instructed the issue of a strong letter to you from the UK. They raise a concern that any such action could impact on us too given our strong partnership with you.

We said that we were partners with EIM and although we had not issued an opposition in the UK, we were partners with you and were side by side with you in protecting the brand, including in this matter.

We each raised options for considerations - the likes of which from each party you could guess. EA are going to consider its position and set up a follow up call

It is too early to say whether discussions will reach a proposal to discuss with you, but I do feel our relationship with them will be helpful.

We will obviously let you know as soon as they revert and not discuss anything leading to any possible settlement without speaking to you.

Hope that helps - lets catch up early next week

Have a good weekend

Cheers

Mark

Mark Millar

Company Secretary and Head of Legal

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# **EXHIBIT B**

**From:** [Mark Millar](#)  
**To:** [Tim Langdell](#)  
**Cc:** [Jo Clayton](#)  
**Sent:** Friday, June 05, 2009 3:37 PM  
**Subject:** RE: Edge/Mirror's Edge

Tim

You have not updated on the legal position with EA - I asked about the applications for strike off. Our trademark could suffer collateral damage if you do not succeed in keeping the Edge brand (from which the trademark that we paid a significant sum for came) on the register - but you have never informed us of dates of that process and what steps you have taken to ensure the EA applications fail.

Please stop obsessing on the CTM issue - and focus on ensuring that we do not both suffer significant damage to our brand.

Mark  
Mark Millar  
Company Secretary and Head of Legal

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## Tim Langdell

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**From:** "Mark Millar" <Mark.Millar@futurenet.com>  
**To:** "Tim Langdell" <tim@edgegames.com>  
**Cc:** "Jo Clayton" <Jo.Clayton@futurenet.com>  
**Sent:** Friday, June 05, 2009 3:17 PM  
**Subject:** RE: Edge/Mirror's Edge  
Tim

You keep banging on with the same request of being on the CTM application before you can proceed when there is no reason to delay the main issue for this. I have not heard any reason why it is essential to add you to the CTM application before you talk to EA when EA have been told by us several times that the relevant part of the CTM is assignable to you - and we have offered to confirm the same in writing. It is not an issue to delay any further and risk greater damage being done to our mutual brand.

Can you please stop focussing on this side show and get on with resolving the issues with EA before our shared brand is severely damaged.

The point you also keep raising about [REDACTED] it is nothing to do with the fact that we are not 100% behind Edge. [REDACTED]

[REDACTED] Please stop questioning our commitment and focus on what you need to do to protect our brand.

I am getting seriously concerned that we are going to suffer damage as a result of your inactivity in the dispute with EA [REDACTED] I am trying to reassure our CEO UK who is receiving numerous calls from journalists and we have consistently confirmed our relationship with you.

Please answer my earlier question on what is going on with proceedings with EA [REDACTED]

[REDACTED] I will be updating our Board on Tuesday - please ensure that you let us have a full report by close of play Monday.

Mark

Mark Millar  
Company Secretary and Head of Legal

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# **EXHIBIT C**

**To:** Electronic Arts Inc. ([sgarfield@ea.com](mailto:sgarfield@ea.com))  
**Subject:** TRADEMARK APPLICATION NO. 77222986 - MIRROR'S EDGE - N/A  
**Sent:** 9/18/2008 10:44:44 AM  
**Sent As:** ECOM108@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/222986

**MARK:** MIRROR'S EDGE

**\*77222986\***

**CORRESPONDENT ADDRESS:**

JAKE SCHATZ  
ELECTRONIC ARTS INC.  
209 REDWOOD SHORES PKWY  
REDWOOD CITY, CA 94065-1175

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Electronic Arts Inc.

**CORRESPONDENT'S  
REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[sgarfield@ea.com](mailto:sgarfield@ea.com)

**NOTICE OF SUSPENSION**

**ISSUE/MAILING DATE:** 9/18/2008

**SUSPENSION PROCEDURE:** This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **75077113 and 78807479**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **was sent previously**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

The examining attorney acknowledges applicant's presentation of arguments against the refusal; however, responses to the arguments will be withheld until disposition of the earlier-filed pending application.

The following refusal(s)/requirement(s) is/are continued and maintained:

This application was published for Opposition on January 15, 2008. It has been determined, by the Commissioner for Trademarks, that a clear error has been made in allowing this mark to be published. Jurisdiction has been restored to the Examining Attorney to take appropriate action in accordance with the evidence contained herein. TMEP Section 1715.03.

**Section 2(d) - Likelihood of Confusion Refusal**

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2219837, 2251584, 3105816, and 3381826. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

The applicant's mark is MIRROR'S EDGE for the following:

Class 009: Pre-recorded audio tapes, video tapes, audio cassettes, video cassettes, CD-ROMs, DVDs, compact discs, and video discs, featuring entertainment related to films, games and music; computer game software; computer game software and manuals sold as a unit; computer video game software; computer video game software and manuals sold as a unit; interactive video game programs; interactive computer game programs, downloadable computer game software, downloadable interactive entertainment software for playing computer games, downloadable interactive entertainment software for playing video games; downloadable computer game software via wireless devices; computer game software for mobile phones; Downloadable ring tones, graphics and digital music files via the internet and wireless devices

Class 016: Paper goods and printed matter, namely, address books; comic books; notebooks; children's books; books containing screenplays or scripts of movies, shows or games; diaries; paper doorknob

hangers; invitation cards; personal organizers; paper table cloths; trading cards; wallet cards, posters; book plates; book marks; checkbook holders and covers; non-electronic personal planners and organizers; artist's materials, namely, pencils, pens; paper gift wrap; paper and fabric gift tags; gift bags; greeting cards, paper party decorations; paper napkins; paper party bags; paper party hats; postcards; stickers; sticker albums; calendars; cardboard figures, namely, temporary tattoos; school and office supplies, namely, erasers, pencils, pens, markers, pencil cases; pencil sharpeners; sheet music; novels; paper cake decorations; bank checks; series of fiction books; juvenile books; reference books in the field of science fiction; personalized books in the field of science, science fiction and computer games; comic magazines; books for role-playing, namely, role playing game equipment in the nature of game book manuals; art books in the field of science, science fiction and computer games; coffee table books in the field of science fiction and computer games; books in the field of science, science fiction and computer games; stationery type portfolios, calendars, children's activity books; magazines in the field of science, science fiction and computer games

Class 028: toys and sporting goods including games and playthings, namely, action figures and accessories therefore, plush toys, balloons, bathtub toys, ride-on toys, equipment sold as a unit for playing card games, toy vehicles, dolls, flying discs; electronic hand-held game unit; game equipment sold as a unit for playing a board game, a card game, a manipulative game, a parlor game and an action type target game; stand alone video output games machines, jigsaw and manipulative puzzles, paper face masks; playing cards; board games; toy candy dispensers and holders; card games; toy vehicles; dolls; hand held units for playing electronic games; hi bounce balls for games; costume masks; paper face masks; toy model vehicles and related accessories therefor sold as units; toy pedal cars; playsets for action figures; playsets for toy vehicles; skateboards; three-dimensional puzzles; toy banks; toy model hobby craft kits; toy model rockets and accessories therefor sold as unit; toy weapons; jigsaw puzzles; plush toys; roller skates; in-line skates; Christmas tree ornaments; amusement park rides; toy vehicles made of non-precious metals; beach toys, namely, inflatable toys; water squirting toys; construction toys; toy building blocks and connecting links for the same; athletic protective pads and padding for skateboarding, in-line skating, and roller skating; toy coin banks; pinball machines; inflatable swimming pools; inflatable pool toys; toy snow globes; toy foam weapons; equipment sold as a unit for playing arcade type electronic video games; kites

Class 038: providing an online bulletin board for transmission of messages among computer users concerning the field of entertainment relating to motion picture films and science fiction

Class 041: Entertainment services, namely, providing news, information and scheduling of programming about interactive computer game software, interactive video game software and interactive computer games and interactive video games, via electronic, wireless and computer networks; providing news, information and scheduling of programming in the field of entertainment relating to motion picture films and science fiction over an electronic network; entertainment services, namely, providing online computer and video games accessed and played via electronic, wireless and computer networks; entertainment services, namely, providing computer and video games accessed and played via mobile and cellular phones and other wireless devices; Entertainment services, namely, a continuing computer game and science fiction show broadcast over television, satellite, audio, and video media; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials in the fields of film and music; entertainment services in the field of film and television, namely, production of films, videos, animation, and computer generated images; film distribution; entertainment in the nature of arranging and conducting competitions in the field of entertainment trivia; fan club services; production and distribution of motion pictures; providing news and information in the field of entertainment relating to motion picture films via global computer networks

The registrant's marks are for the following:

2219837 EDGE for printed matter and publications, namely, magazines, newspapers, journals, and columns and sections within such magazines, newspapers, and journals, and pamphlets and booklets, all in the fields of business, entertainment, and education, relating to toys, games, computers, computer software, computer games, video games, board games, hand-held games, interactive media, television, interactive music, and video; stationery; posters; exterior packaging for software, namely, cardboard cartons; printed paperboard inserts for plastic packaging of software; paper bags; plastic bubble packs for packaging; envelopes; and paper pouches for packaging

2251584 CUTTING EDGE for publications, namely comic books and comic magazines and stories in illustrated form

3105816 EDGE for printed matter, namely, comic books, comic book reference guide books, books featuring stories in illustrated forms, graphic novels, comic strips, picture postcards, comic postcards, printed postcards, novelty stickers, decals, bumper stickers, note cards, note paper, stationery folders, computer magazines, video game magazines, magazines and posters about interactive entertainment; writing instruments, namely pencils, ball point pens, ink pens

3381826 EDGE for Computers; computer hardware; computer peripherals; computer games software; plug-on computer interface boards; computer accessories, namely, keyboards, mice, player-operated electronic game controllers for computers and electronic video game machines, computer memories, headphones, augmented reality headsets for use with computers and video game machines, virtual reality headsets for use with computers and video game machines, storage disc cases, video display and capture cards, sound cards, audio speakers, web-cameras, carrying cases and bags, all for carrying portable computers or computer accessories; video game software; video game consoles, namely, video game machines for use with televisions and video monitors; video game accessories, namely, joysticks made for video games, video game interactive control floor pads and mats, and video game interactive remote control units; video game peripherals, namely, external hard drives for computers and video game machines and other storage devices in the nature of plug-in memory devices that attach to the USB port which are commonly known as 'flash drives' or "thumb drives" and video adapters in the nature of adapters which convert the video output of the computer or video game machine to the video input of a monitor or television; set top boxes, cable modems, dsl modems.

The registered marks have a common owner.

### **Comparison of the Marks**

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §1207.01(b).

The applicant's mark, MIRROR'S EDGE, is similar to the registered mark as they all contain the word EDGE or use EDGE as the full mark. While applicant's mark adds the term MIRROR, the mere addition of a term to a registered mark does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Section 2(d). *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) ("GASPAR'S ALE and "JOSE GASPAR GOLD"); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) ("BENGAL" and "BENGAL LANCER"); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) ("THE LILLY" and "LILLI ANN"); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988) ("MACHO" and "MACHO COMBOS"); *In re United States Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" and "CREST CAREER IMAGES"); *In re Corning Glass*

*Works*, 229 USPQ 65 (TTAB 1985) (“CONFIRM” and “CONFIRMCELLS”); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (“ACCUTUNE” and “RICHARD PETTY’S ACCU TUNE”); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) (“HEAD START” and “HEAD START COSVETIC”); TMEP §1207.01(b)(iii).

### **Comparison of the Goods and Services**

The goods and services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int’l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The applicant’s goods and services are closely related to the registrant’s goods and services as they all contain goods and services related to comic books, computer game programs, and other highly related goods likely to travel through the same channels of trade to the same classes of purchasers. Accordingly, because confusion as to source is likely, registration is refused under Trademark Action Section 2(d) based on a likelihood of confusion.

Please see attached Internet website evidence showing goods similar to the parties sold through the similar channels of trade.

Since the identification of the applicant’s services is very broad, it is presumed that the application encompasses all services of the type described, including those in the registrant’s more specific identification, that they move in all normal channels of trade and that they are available to all potential customers. TMEP §1207.01(a)(iii).

Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i). Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

/Kapil K. Bhanot/  
Trademark Examining Attorney  
Law Office 108  
Phone - (571) 270-1516  
Fax No. (571) 270-2516

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

# **EXHIBIT D**

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**SIXTH CLAIM FOR RELIEF**

**Declaratory Relief**

127. Counterclaimants incorporate the above allegations as if set forth in full herein.

128. An actual controversy exists as to whether Counterdefendants have any common law rights in the alleged “family” of marks set forth in the First Amended Complaint, including the marks that are the subject of Registration Nos. 3,105,816; 2,219,837; 3,381,826; 3,559,342; and 2,251,584 and Application Serial Nos. 78/807,479 and 78/981,294, including as a result of abandonment through non-use of each mark with the intent not to resume use and otherwise through a course of conduct that has caused each mark to lose all significance as a mark and/or as an indicator of source.

**Kendall Brill  
& Klieger LLP**  
10100 Santa Monica Blvd.  
Suite 1725  
Los Angeles, CA 90067

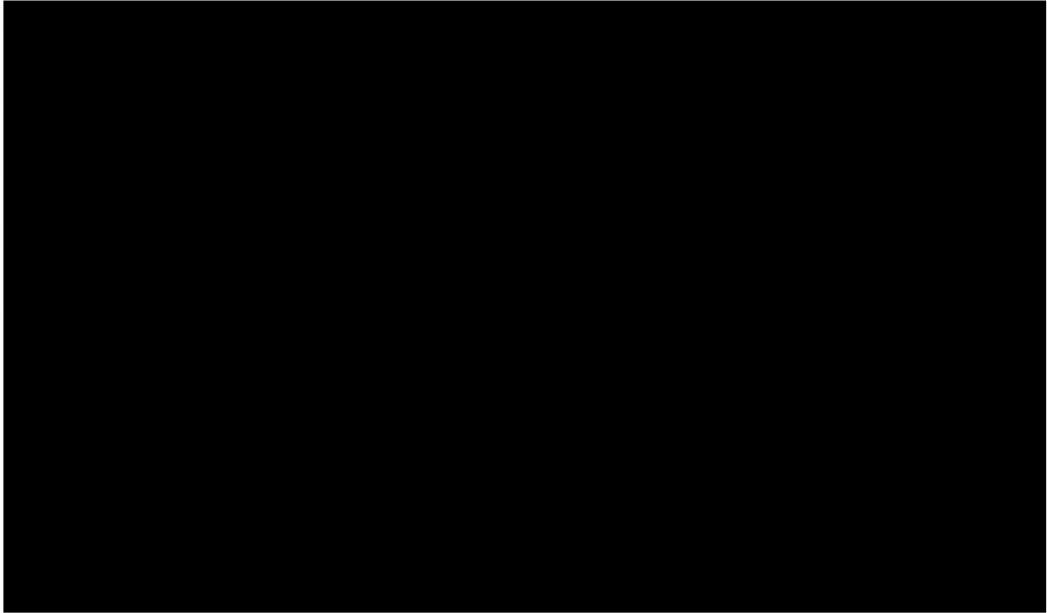
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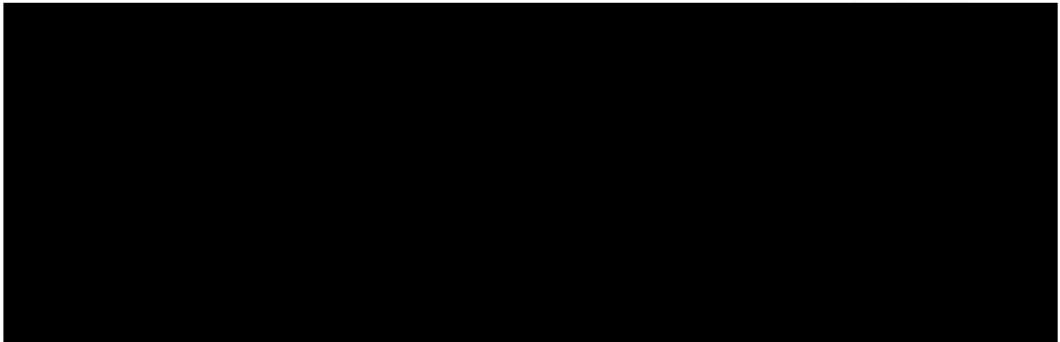
129. EA is entitled to a declaratory judgment that Counterdefendants have no common law rights in and to the alleged “family” of marks set forth in the First Amended Complaint, including the marks that are the subject of Registration Nos. 3,105,816; 2,219,837; 3,381,826; 3,559,342; and 2,251,584 and Application Serial Nos. 78/807,479 and 78/981,294.

# **EXHIBIT E**

2.3



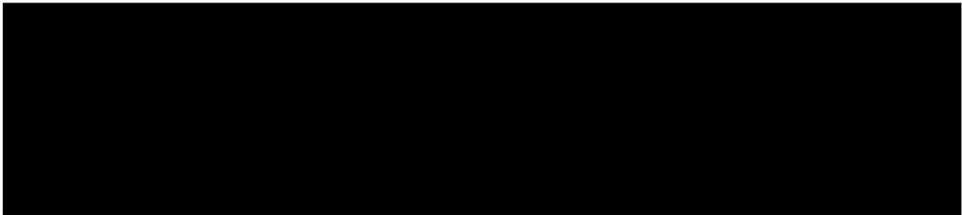
2.4



2.5 The Licence does not extend to North America, save that:

→ 2.5.1 for the avoidance of doubt, the availability of on-line access to Edge Magazine from North America and/or the provision of incidental copies of Edge Magazine to North America (for example on subscription) shall not constitute a breach of this Agreement.

2.5.2





- Please select your favourite Future Publishing magazine -

June 2004

# EDGE

The videogame magazine for grown-ups  
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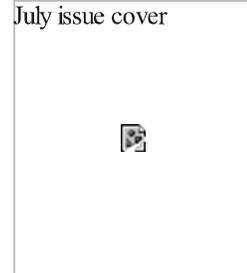
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# **EXHIBIT F**

5.2.1

5.2.2

5.2.3



6 GENERAL

6.1



6.2

**Assignment**

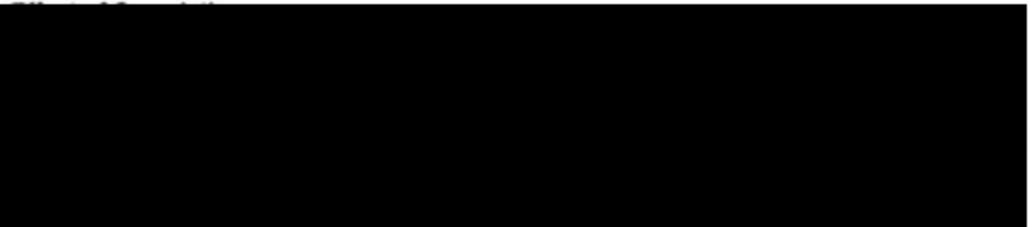


This Agreement and Deed shall be binding upon and enure for the benefit of the successors of the parties and shall not be assignable by any party without the prior written consent of the others, such consent not to be unreasonably withheld.

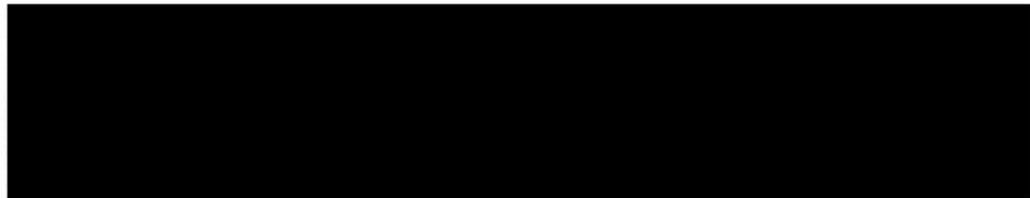
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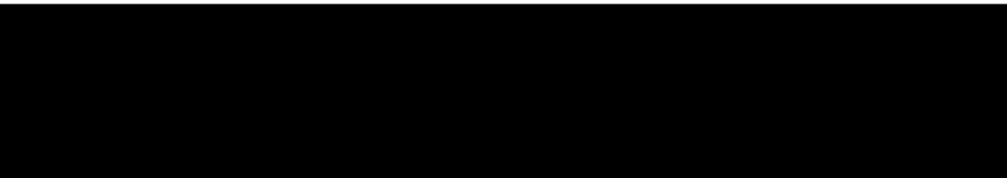
6.4



6.5



6.6



# **EXHIBIT G**

1 KENDALL BRILL & KLIEGER LLP  
Robert N. Klieger (192962)  
2 *rklieger@kbbfirm.com*  
Joshua M. Rodin (224523)  
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4 Los Angeles, California 90067  
Telephone: 310.556.2700  
5 Facsimile: 310.556.2705

6 HUSCH BLACKWELL SANDERS LLP  
Alan S. Nemes (admitted *pro hac vice*)  
7 *alan.nemes@huschblackwell.com*  
190 Carondelet Plaza, Suite 600  
8 St. Louis, Missouri 63105  
Telephone: 314.345.6461  
9 Facsimile: 314.480.1505

10 Attorneys for Defendant and Counterclaimant  
Electronic Arts Inc. and Counterclaimant  
11 EA Digital Illusions CE AB

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

14  
15 EDGE GAMES, INC., a California corporation,

16 Plaintiff,

17 v.

18 ELECTRONIC ARTS INC., a Delaware  
corporation,

19 Defendant.

20  
21 ELECTRONIC ARTS INC., a Delaware  
corporation; and EA DIGITAL ILLUSIONS CE  
22 AB, a Swedish corporation,

23 Counterclaimants,

24 v.

25 EDGE GAMES, INC., a California corporation;  
and THE EDGE INTERACTIVE MEDIA, INC.  
26 a California corporation,

27 Counterdefendants.  
28

Case No. 10-CV-2614-WHA

**DECLARATION OF WALTER ELIOT  
BARD IN OPPOSITION TO PLAINTIFF  
EDGE GAMES, INC.'S MOTION FOR  
PRELIMINARY INJUNCTION**

[Memorandum of Points and Authorities;  
Declarations of James Binns, Jonathan Correa,  
Lincoln Hershberger, Robert N. Klieger, and  
Jacob Schatz; and Request for Judicial Notice  
filed concurrently herewith]

Date: September 30, 2010  
Time: 8:00 a.m.  
Crtrm.: 9

Hon. William H. Alsup

Complaint Filed: June 15, 2010

**DECLARATION OF WALTER ELIOT BARD**

I, Walter Eliot Bard, declare as follows:

1. I am Vice President and Deputy General Counsel of Marvel Entertainment, LLC (collectively with its affiliated companies, "Marvel"). The matters set forth below are based upon my review of Marvel's business records and information known to me in my capacity as Deputy General Counsel.

2. On December 7, 1994, in anticipation of launching a line of comic books under the name MARVEL EDGE, Marvel filed an application in the United States Patent and Trademark Office ("USPTO") to register MARVEL EDGE for "publications, namely comic books and comic magazines." The application was assigned Serial No. 74/607,899. In July 1995, the first comic books with the Marvel Edge logo were shipped to consumers and retailers.

3. On or about April 17, 1995, Marvel filed applications in the USPTO to register the marks DOUBLE EDGE, OVER THE EDGE, and CUTTING EDGE, which Marvel intended to use as the titles of comic books published as part of the MARVEL EDGE line. Each of the applications was for "publications, namely comic books and comic magazines and stories in illustrated form." The applications were assigned Serial Nos. 74/662,337, 74/662,338, and 74/662,343, respectively.

4. Marvel published *Double Edge Alpha*, a comic book featuring the Marvel character "The Punisher," in or about July 1995. Marvel published *Double Edge Omega*, also featuring The Punisher, in or about October 1995. Both of these titles were released as part of the MARVEL EDGE line. Both titles have been out-of-print for nearly fifteen years. Marvel has not published any other title using the DOUBLE EDGE name or mark.

5. Between November 1995 and August 1996, Marvel published a ten-book miniseries under the title *Over The Edge*, the first five issues of which were published under the MARVEL EDGE line. The other five issues were published after Marvel discontinued the MARVEL EDGE line in early 1996. All of the titles have been out-of-print for more than fourteen years. Marvel has not published any other title using the OVER THE EDGE name or mark.

6. Marvel published *Cutting Edge*, a comic book featuring the Marvel character "The Hulk," in or about December 1995. This title was released as part of the MARVEL EDGE line.

1 The title has been out of print for nearly fifteen years. Marvel has not published any other title  
2 using the CUTTING EDGE name or mark.

3 7. None of The Edge Interactive Media, Inc., Edge Games, Inc., or Tim Langdell  
4 (collectively, "Edge Games") had any involvement in Marvel's publication of any of the above  
5 referenced comic books, nor were any of the titles, names, or marks licensed from Edge Games.

6 8. Marvel discontinued its MARVEL EDGE line in early 1996. Marvel's application  
7 to register the MARVEL EDGE mark was officially abandoned in June 1997.

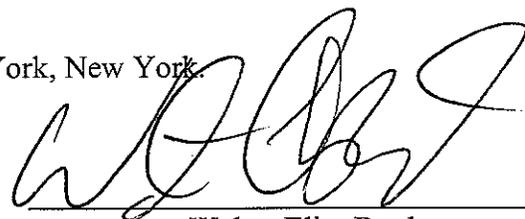
8 9. In or about December 1996, more than three months after the last of the above titles  
9 had been published, Edge Games filed a Notice of Opposition to Marvel's registration of the marks  
10 DOUBLE EDGE, OVER THE EDGE, and CUTTING EDGE. Edge Games claimed that it had  
11 made "extensive use" of those marks since October 1984.

12 10. In or about September 1997, Marvel assigned its rights in the marks DOUBLE  
13 EDGE, OVER THE EDGE, and CUTTING EDGE, including the then-pending applications to  
14 register those marks, to Edge Games. Marvel had not made any use of those marks for more than  
15 a year prior to the assignment, nor has it made any use of those marks at any time since the  
16 assignment. Marvel is not a licensee of Edge Games with respect to any of the marks.

17 11. In or about November 1994, Marvel acquired a company named Malibu Comics.  
18 Malibu Comics published a three-book miniseries under the name EDGE, the last installment of  
19 which was published no later than spring 1995. Marvel has not published any further books in the  
20 EDGE series, whether as part of the Malibu Comics imprint or otherwise, nor does Marvel have  
21 any plans to publish additional books in the series.

22 I declare under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed September <sup>8</sup>7, 2010, at New York, New York.



Walter Eliot Bard

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

STATEMENT OF USE UNDER 37 C.F.R. 2.88

Mark: CUTTING EDGE

Class: 16

Serial No. : 74/662,343

TO THE ASSISTANT SECRETARY AND  
COMMISSIONER OF PATENTS & TRADEMARKS:

APPLICANT: Marvel Characters, Inc.

NOTICE OF ALLOWANCE ISSUE DATE: August 12, 1997

Applicant requests registration of the above-identified trademark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq., as amended). Three (3) specimens showing the mark as used in commerce are submitted with this Statement.

Applicant is using the mark in commerce on or in connection with the following goods:

PUBLICATIONS, NAMELY COMIC BOOKS AND COMIC MAGAZINES AND  
STORIES IN ILLUSTRATED FORM

-Date of first use of the mark anywhere: At least as early as December 1, 1995

-Date of first use of the mark in commerce which U.S. Congress may regulate: At least as early as December 1, 1995

-Specify the type of commerce: Interstate Commerce

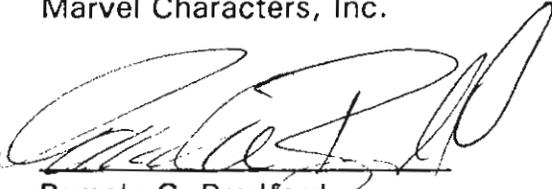
-Specify manner or mode of use of mark on or in connection with the goods: The mark is used by applying it directly to the goods and/or packaging or labels for the goods.

**Please address all correspondence in this matter to the attention of Pamela G. Bradford, Esq., c/o Marvel Entertainment Group, Inc., 387 Park Avenue South, New York, NY 10016.**

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that she is properly authorized to execute this Statement of Use on behalf of the applicant; she believes the applicant to be the owner of the trademark sought to be registered; the trademark is now in use in commerce; and all statements made of her own knowledge are true and all statements made on information and belief are believed to be true.

Marvel Characters, Inc.

By: 

Name: Pamela G. Bradford

Title: Vice President

Dated: 9/25/97

# **EXHIBIT H**

**Tim Langdell**

---

**From:** "Mark Millar" <Mark.Millar@futurenet.com>  
**To:** "Tim Langdell" <tim@edgegames.com>  
**Cc:** "Jo Clayton" <Jo.Clayton@futurenet.com>  
**Sent:** Thursday, March 05, 2009 9:47 AM  
**Subject:** <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022703494.html>  
Tim

I came across this the other day - are you licensing them the Edge name for the game?

Kind regards  
Mark

Mark Millar  
Company Secretary and Head of Legal

Future plc  
Beauford Court  
30 Monmouth Street  
Bath BA1 2BW

Tel 01225 822764 | Fax 01225 822836 | [www.futureplc.com](http://www.futureplc.com)

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## Puzzle Yourself With the Edge Game on Your iPhone

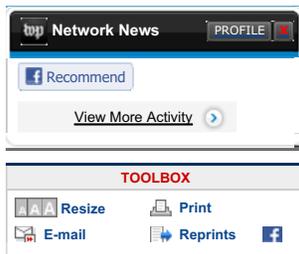
Steve Horton  
PC World  
Monday, March 2, 2009; 12:19 AM

[Edge](#) is a somewhat nondescript name for a spellbinding iPhone/iPod Touch game. The object is to maneuver a 3D block around a level using either the touch screen or accelerometer, your choice, picking up glowing cubes and pressing various switches to navigate around. If anyone is old enough to remember the classic game Marble Madness, Edge is a lot like that, but much easier to control.

The cube moves itself one face at a time, can speed up or slow down based on how you gesture, and can even climb itself up one level. It only takes a level or two to get the trick, and then the game really throws the hazards at you.

Finishing each level gets you a grade, that's based on how many glowing cubes you found and how few times you died.

Edge is an addictive puzzler with a stylish high-res interface and presentation that will also recall the Sony puzzle game Lumines. Finally, it seems as if most iPhone software contains bugs in the 1.0 version, so it's refreshing to see this one on its first version and apparently bug-free. Definitely recommended.

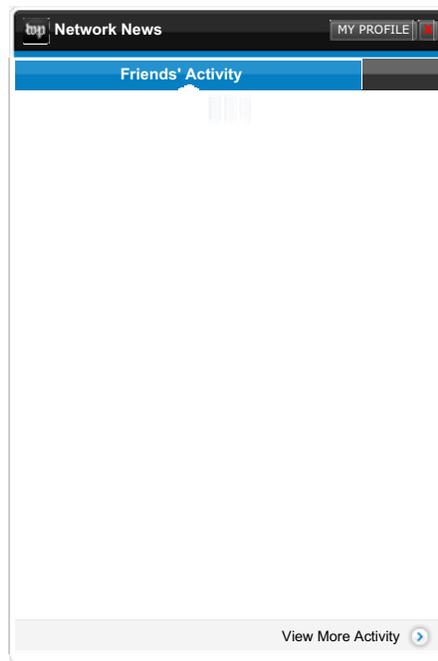


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Claimant  
Mark Millar  
Fourth  
EXHIBIT MM4  
15 October 2010

CLAIM NO HC09C02265

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

B E T W E E N

FUTURE PUBLISHING LIMITED

Claimant

and

(1) THE EDGE INTERACTIVE MEDIA, INC  
(2) EDGE GAMES, INC  
(3) TIMOTHY LANGDELL

Defendants

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FOURTH WITNESS STATEMENT OF MARK FALCON MILLAR

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I, MARK FALCON MILLAR, of Beauford Court, 30 Monmouth Street, Bath, BA1 2BW,  
WILL SAY as follows:

1 I am a solicitor and General Counsel and Company Secretary of the Claimant  
Future Publishing Limited ("Future").

2 The matters stated in this witness statement are either within my own knowledge or  
belief or they are based on information and belief in which case I state the source of  
the information and believe it to be true.

3

[REDACTED]

4

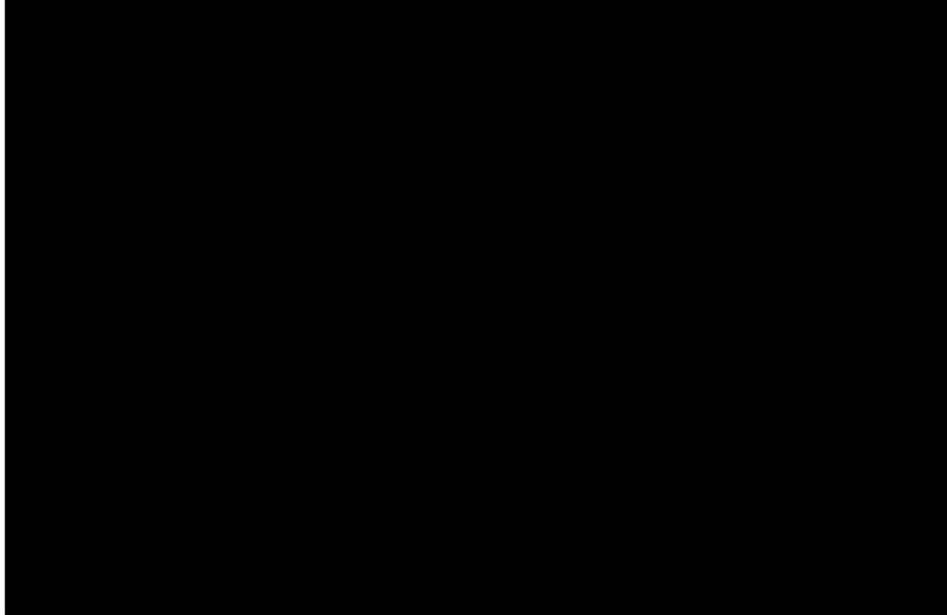
[REDACTED]

[REDACTED]

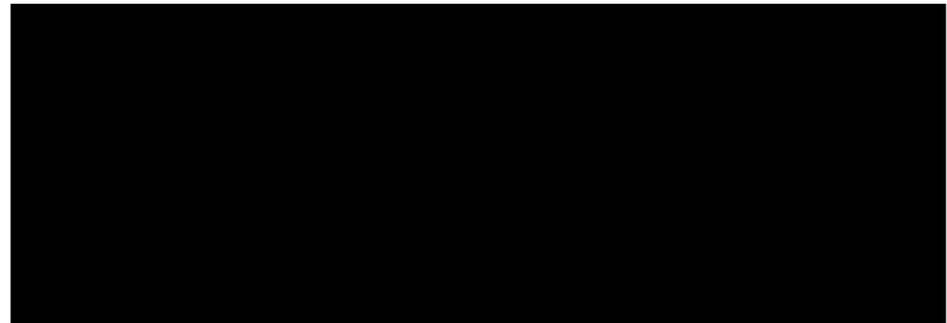
5

[REDACTED]

29

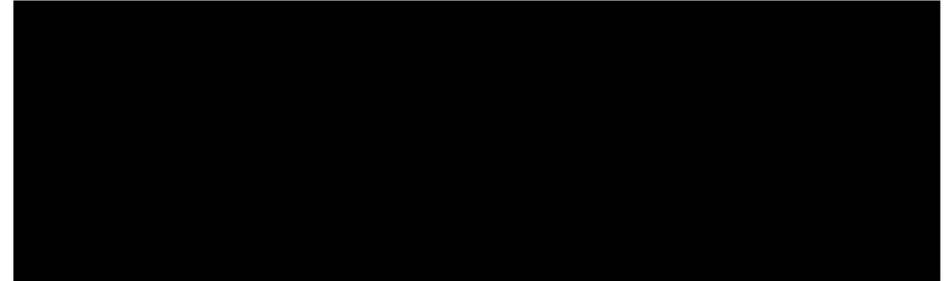


30 At paragraph 39, Dr Langdell asserts that Future must have known about Mobigame



31 Further, and in any event, if Future had wanted to “conceal” Mobigame from Dr Langdell, why would I have notified him at all?

32



33



34



**From:** "Tim Langdell" <tim@edgegames.com>  
**To:** "Mark Millar" <Mark.Millar@futurenet.com>  
**Sent:** Wednesday, June 10, 2009 9:54 AM  
**Subject:** Re: Edge/Mirror's Edge

Mark,

If you or your colleagues there at Future are now going to try to claim the recent negative publicity is our fault then that is outrageous. It was Future that brought the Mobigame trademark infringement to our attention and it was Future that insisted under our contract with you we had to take action against Mobigame/Papazian. And as you know, it was Future that demanded we take action against EA over "Mirror's Edge" and you have recently been bullying us to step up that action to ensure EA do not get registration of an Edge mark in their name. So if you are now going to try to turn around and distance yourself from the negative publicity, try to blame all this on Edge and me personally when you know Future forced us to do everything we have recently been criticized for doing, then as I say that is *outrageous*.

I note your repeated insistence that we sue Mobigame but we continue to refuse to do so: they are a fellow independent developer and Edge wont risk the ire of the independent gaming community by taking legal action against Mobigame no matter how much you insist that our Agreement with you obliges us to do so.

What I particularly object to is you using us to take action against EA and Mobigame and then pretending to people that you do not approve of what we are doing and/or that Future is not associated with Edge Games. That is the impression we are getting from people like David Papazian of Mobigame and others, and we sincerely trust there is no foundation to these rumors about the way you are representing your position and Future's relationship with us. If it is true that you have told Mobigame that Future does not object to Papazian's use of the mark Edge, or if you have indicated to Papazian that Future and Edge Games are not related via our Agreement and the license, then I need you to correct those egregious false impressions immediately. Or you need to clarify to Papazian that you have been saying one thing to him and another thing to us. As I have said before, the fact you refuse to add Edge Games as an applicant to the CTM application for the mark EDGE that you filed is giving the impression to Papazian and others on the Internet that we are not telling the truth when we say that application was filed on our joint behalf because of our Agreement and because Future is our licensee as a result of an amicable agreement that we entered into because Future requested it.

Tim

Dr. Tim Langdell  
CEO, Edge Games  
Pasadena, CA / London, UK